



POLICE DEPARTMENT

April 23, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Robert Mixon
Tax Registry No. 920620
88 Precinct
Disciplinary Case No. 2011-5482

Police Officer Clark Taylor
Tax Registry No. 931310
88 Precinct
Disciplinary Case No. 2011-5483

The above-named members of the Department appeared before me on December 10, 2013, charged with the following:

Disciplinary Case No. 2011-5482

1. Said Police Officer Robert Mixon, while assigned to the 88th Precinct, while on-duty, on or about January 1, 2011, at Brooklyn Hospital, in Kings County, did fail and neglect to perform said officer's duties, to wit: said officer failed to conduct a proper investigation relating to an unidentified aided individual who was later identified as a homicide victim, as required. (*As amended*)

P.G. 203-05, Page 1, Paragraph 1 – POLICE OFFICER – DUTIES AND RESPONSIBILITIES

2. Said Police Officer Robert Mixon, while assigned as indicated in Specification #1, while on-duty, on or about January 1, 2011, at Brooklyn Hospital, in Kings County, did fail and neglect to make proper entries (sic) said officer's Activity Log (PD 112-145) relating to an unidentified aided individual who was later identified as a homicide victim. (*As amended*)

P.G. 212-08, Page 1, Paragraph 1 – ACTIVITY LOGS COMMAND OPERATIONS

Disciplinary Case No. 2011-5483

1. Said Police Officer Clark Taylor, while assigned to the 88th Precinct, while on-duty, on or about January 1, 2011, at Brooklyn Hospital, in Kings County, did fail and neglect to perform said officer's duties, to wit: said officer failed to conduct a proper investigation relating to an unidentified aided individual who was later identified as a homicide victim, as required. (*As amended*)

P.G. 203-05, Page 1, Paragraph 1 – POLICE OFFICER – DUTIES AND
RESPONSIBILITIES

2. Said Police Officer Clark Taylor, while assigned as indicated in Specification #1, while on-duty, on or about January 1, 2011, at Brooklyn Hospital, in Kings County, did fail and neglect to make proper entries (sic) said officer's Activity Log (PD 112-145) relating to an unidentified aided individual who was later identified as a homicide victim. (*As amended*)

P.G. 212-08, Page 1, Paragraph 1 ACTIVITY LOGS COMMAND
OPERATIONS

The Department was represented by Beth Douglas, Esq., Department Advocate's Office. Respondents Mixon and Taylor were represented by John Tynan, Esq.

Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2011-5482

Respondent Mixon is found Not Guilty of Specification No. 1. He is found Guilty of Specification No. 2.

Disciplinary Case No. 2011-5483

Respondent Taylor is found Not Guilty of Specification No. 1. He is found Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on the evening of December 31, 2010, Person A went to a New Year's Eve party at [REDACTED], and that he was punched there and rendered unconscious by a man later identified as Person B. Police Officers Tristan Villaroman and James Cooney, who were on duty assigned to Police Service Area 3, responded to [REDACTED] but did not make an arrest. An ambulance staffed by Emergency Medical Service (EMS) workers John Barry and Ashley Pernice arrived at [REDACTED] and transported Person A to Brooklyn Hospital. Respondents, who were on duty in a Radio Motor Patrol car (RMP), assigned to Sector 88 Adam, monitored a radio transmission from the central dispatcher requesting that Sector 88 Eddie respond "to Brooklyn Hospital in regards to a 54 [aided person] that was removed from [REDACTED] [REDACTED]. EMS is requesting an RMP to take a report." After Sector 88 Eddie informed the dispatcher that they were handling another call, Respondents radioed the dispatcher that they would respond to Brooklyn Hospital. [Department's Exhibit (DX) 3]

The Department Advocate's Case

The Department Advocate called Detective Daniel Lefevre as her sole witness.

Detective Daniel Lefevre

Lefevre, a 12-year Member of the Service (MOS) who is assigned to the Internal Affairs Bureau (IAB), investigated an allegation that Respondents and Officers Villaroman and Cooney failed to conduct a proper investigation into a homicide.

Lefevre ascertained that at about 10:50 p.m. on December 31, 2010, Villaroman and Cooney received a radio assignment of "10-54 unconscious" at [REDACTED]. Upon arriving at the scene, Villaroman and Cooney found Fire Department and EMS personnel rendering aid to an unidentified male who was lying unconscious on the floor. Lefevre testified that he concluded that Villaroman and Cooney had failed to conduct a proper preliminary investigation into what had transpired because instead of conducting an investigation into the incident or the identity of the victim, they radioed in a disposition of "10-55 EMS," meaning that police service was no longer needed and EMS was bringing the aided person to the hospital. Lefevre also ascertained that EMS Lieutenant Zepeda had called 911 and requested that police respond to Brooklyn Hospital and that Respondents had responded to Brooklyn Hospital.

Lefevre conducted separate official Department interviews of the Respondents who each stated at his respective interview that upon their arrival at Brooklyn Hospital they were met at the entrance by an EMS worker who did not identify himself. The EMS worker told Respondents that he knew that police officers had responded to a previous job but he did not know the names of these officers. He asked Respondents how he could learn the names of these two officers. Respondents told the EMS worker that he could call central dispatch to find out who the officers were.

Lefevre opined that after they arrived at Brooklyn Hospital, Respondents had failed to conduct a proper preliminary investigation as to why the EMS worker needed the names of the two police officers. After their interaction with the EMS worker, Respondents had radioed a disposition of "10-90Y" to call central dispatch which meant

that police presence was unnecessary and no longer needed. Respondents then resumed patrol.

As part of his investigation, Lefevre examined both Respondents' Activity Log entries covering December 31, 2010 and January 1, 2011. Respondent Mixon only wrote in his Activity Log entry for January 1, 2011, that his tour of duty was "2315 X 0750." (DX 1) Respondent Taylor wrote in his Activity Log that on January 1, 2011, at "0010" he was "10-10 @ BKL HOSP" and that at "0015" he was "90 Y." (DX 2)

Lefevre testified that both Respondents were supposed to have made an entry of the name of the EMS worker at Brooklyn Hospital that they met there and what the EMS worker had asked them, but neither had done so. Lefevre opined that Respondent Taylor should have noted not just that they had responded to Brooklyn Hospital, but also that they had a conversation with an EMS worker there.

At the end of his investigation, Lefevre concluded that Respondents had failed to conduct a preliminary investigation at Brooklyn Hospital in that they could have asked the EMS worker "what kind of job" he was referring to. Lefevre opined that Respondents could have radioed central dispatch and requested more details about the previous job and they could have gone inside the hospital to try to identify the aided person and his status. Lefevre testified that at the point in time when Respondents arrived at Brooklyn Hospital, the aided crime victim was still unidentified. Lefevre claimed that had Respondents entered the hospital and met with Zepeda, they would have obtained information that would have launched an immediate investigation regarding this homicide case. Lefevre opined that other investigative steps that Respondents could have taken would have been to retrieve the SPRINT Report for the previous job, or to ask

Central to identify the sector or RMP that responded to the job. Respondents did neither of these things. The unidentified victim was later determined to be **Person A**.

On cross-examination, Lefevre agreed that Respondents were not aware that the call they were responding to concerned a homicide and that the incident that resulted in Person A being transported to Brooklyn Hospital was not classified as a homicide until several days later. Lefevre also agreed that there was nothing in the radio transmission that indicated that an assault had taken place at 487 Carlton Avenue. Lefevre confirmed that the only information that the transmission provided was that Respondents should go to Brooklyn Hospital to speak with EMS. Lefevre confirmed that his investigation revealed that Villaroman and Cooney had not attempted to gather any information at 487 Carlton Avenue about what had taken place there.

Lefevre also confirmed that there was an EMS room inside the hospital building near the entrance and that during his official Department interview on March 21, 2011, Respondent Mixon had stated that he had spoken to an EMS lieutenant inside this EMS office. Lefevre agreed that Respondents were not made aware by EMS personnel that there was an unidentified aided inside the hospital or that the person who had been aided and transported to the hospital was the victim of a crime. Lefevre confirmed that EMS and central dispatch all had failed to provide Respondents with any information as to why they were responding to Brooklyn Hospital. Lefevre agreed Respondents were not required to ask the prior tour of another command if anything unusual had occurred.

Respondents' Case

Respondent Taylor and Respondent Mixon each testified on his own behalf.

Respondent Taylor

Respondent Taylor, an 11-year member of the Department, is currently assigned to the 88 Precinct. He has been partners with Respondent Mixon for about 10 years. On the night of January 1, 2011, they were working the 11:15 p.m. by 7:50 a.m. tour in Sector Adam in [REDACTED] Brooklyn. At approximately 12:10 a.m., they received their first radio transmission of their tour: See EMS at Brooklyn Hospital. No additional information was given by the radio dispatcher about this "job."

Upon arriving at the hospital, Respondents went inside the EMS entrance. As they were walking toward the EMS room in search of an EMS worker, they encountered an EMS worker outside the EMS room. This EMS worker asked, "How do you find out a police officer's name?" The EMS worker did not explain why he needed the police officer's name. Respondent Mixon spoke with him. Respondent Taylor did not recall any of their conversation. Respondents remained at the EMS room for a little over five minutes. At no point did anyone approach them about an assault that had taken place earlier at 487 Carlton Avenue. Respondent Taylor was not aware of any police activity or police incident at that location prior to the start of his tour that night.

Respondent Taylor recalled that after the conversation with the EMS worker, he and Respondent Mixon left the hospital. They marked the job as "10-90Y," meaning that police presence was unnecessary at that time, and made a radio transmission to central dispatch to that effect. Respondent Taylor testified that their "10-90Y" disposition was accurate and appropriate because as far as they knew, a police presence at Brooklyn

Hospital was unnecessary at that time because “we were never given any information that it was needed. They didn’t say any crime happened.”

On cross-examination, Respondent Taylor confirmed that he and Respondent Mixon advised the EMS worker to make his own efforts to determine the names of the officers who had been present earlier at 487 Carlton Avenue. Respondent Taylor could not recall if the EMS worker who met them was a lieutenant. The EMS worker did not identify himself as a lieutenant. Respondent Taylor did not recall if the worker identified himself as the person who had requested a police response to the hospital. Respondent Taylor confirmed that he never asked the EMS worker what “job” he was referring to; that he and Respondent Mixon did not enter the emergency room; that they did not speak with any hospital personnel; and that they did not notify the patrol supervisor about their interaction with the EMS worker at the hospital. Respondent Taylor did not recall whether he was the recorder or the operator. He conceded he was required to indicate that information in his Activity Log. Respondent Taylor confirmed the term “54” referred to an aided.

Respondent Mixon

Respondent Mixon is a 16-year member of the Department who has been assigned to the 88 Precinct for 14 years. On January 1, 2011, he and Respondent Taylor started their tour at 2315 hours on December 31, 2010. Respondent Mixon recalled hearing “10-10, see EMS at Brooklyn Hospital.” They radioed the dispatcher that they would respond to Brooklyn Hospital. Upon arriving there, they entered the hospital through the “emergency doors where EMS normally take their patients” and walked toward the

“EMS break room.” They encountered an EMS worker standing at the break room door. Respondent Mixon could not recall the rank of this EMS worker. The EMS worker asked Respondents “how can he find out what officer came to one of his jobs earlier.” They told the EMS worker “to contact his dispatcher” who would then “contact our dispatcher” who would know the command to which the officers were assigned and that he could then contact the command and find out the names of the officers. The EMS worker seemed satisfied with this response and did not ask for any additional assistance. The EMS worker did not offer any information about the nature of his request or why he wanted to find out the identity of the officers who had been present at the earlier “job.” They had no indication that there was any police investigation ongoing at that time and they had no reason to believe that they were supposed to conduct any further investigation based on either their conversation with the EMS worker or the radio call that sent them to the hospital.

On cross-examination, Respondent Mixon conceded that he did not make Activity Log entries about being dispatched to the hospital or about the conversation they had with the EMS worker. He never asked the EMS worker what the location was where the earlier “job” had taken place nor did he radio the dispatcher to request that the dispatcher assist the EMS worker in identifying the officers from the previous “job.” He was confronted with a statement he made at his March 21, 2011 official Department interview that the EMS worker had told him “I don’t know why my lieutenant called you” to request that police respond to Brooklyn Hospital. Respondent Mixon confirmed that he did not ask the EMS worker where the lieutenant was. He did not enter the emergency room area or any other part of Brooklyn Hospital nor did he did request any additional

information from the dispatcher. Respondent Mixon agreed he did not enter in his Activity Log whether he was the operator or recorder.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2011-5482 and Disciplinary Case No. 2011-5483

Specification No. 1

Respondents are jointly charged with having failed to conduct a proper investigation at Brooklyn Hospital¹ relating to an unidentified aided individual who was later identified as a homicide victim.

At the point when Respondents arrived at Brooklyn Hospital, the only information they possessed was the information that was contained in the dispatcher's radio transmission. This transmission consisted solely of: "Go to Brooklyn Hospital in regards to a 54 [aided person] that was removed from [REDACTED]. EMS is requesting an RMP to take a report." (DX 3) Since nothing contained in the dispatcher's transmission put Respondents on notice that the aided person was even the victim of a crime, much less likely to die, it is clear that Officers Villaroman and Cooney, who had responded to [REDACTED], failed to inform central dispatch that the aided person was a seriously wounded crime victim. As to what Respondents learned when they arrived at Brooklyn Hospital, the Assistant Department Advocate (the Advocate) offered no evidence to refute Respondents' testimony that the EMS worker only asked them how he could ascertain the names of officers who had responded to a previous call. Thus, it is

¹ The original charges had alleged that Respondents had failed to conduct a proper investigation "at [REDACTED]" but on the day that this trial commenced, the Assistant Department Advocate moved to amend the charges by deleting the phrase [REDACTED] and replacing it with "at Brooklyn Hospital" since it is undisputed that Respondents were never present at [REDACTED].

not disputed that the EMS worker said nothing to Respondents about the aided person, much less that he was the victim of a crime or that he had died or was likely to die.

Nonetheless, the Advocate argued that Respondents were under a duty to enter the emergency room and ascertain the medical status of the aided person who had been removed from [REDACTED]. Since the dispatcher's transmission only advised Respondents that "EMS is requesting an RMP to take a report" and since the EMS worker only asked them how he could learn the names of the officers who had responded to [REDACTED], the record does not support the Advocate's position.

Lefevre, the Advocate's only witness, asserted that Respondents had "failed to conduct a preliminary investigation into finding out why" the EMS worker wanted to know the names of the officers who had been present at [REDACTED]. Although Lefevre did not assert that Respondents' action of recommending to the EMS worker that he contact dispatch to obtain the names of the officers who had responded to the previous call was *per se* improper, he opined that if Respondents had personally contacted the dispatcher to ascertain who the officers who had responded to [REDACTED] were, Respondents might have learned not just the names of the officers who had responded to [REDACTED] but also the fact that the aided person who had been removed from there was the victim of an assault. However, even if Respondents had contacted the dispatcher regarding who had responded to [REDACTED], the dispatcher would most likely have simply informed them of what post had responded to [REDACTED] [REDACTED]. Thus, Lefevre's testimony that Respondents would have learned from the dispatcher that the aided person was a crime victim constitutes pure speculation.

Lefevre also opined that Respondents could have taken investigative steps such as retrieving the SPRINT Report for the previous job or requesting that central identify the sector or the RMP that had responded to the call, and that Respondents could also have asked the EMS worker questions that would have lead them to discover that the aided person had been the victim of a crime and had died at the hospital. However, two previous decisions support Respondents' position that just because officers could have undertaken certain investigative actions does not, *ipso facto*, establish that not taking these actions rises to the level of the misconduct of having failed to conduct a proper investigation.

For example, in Case Nos. 2006-81884 and 2006-81885 (Apr. 21, 2008), two officers were found not guilty of charges that they failed to conduct a proper investigation after they responded to a 911 call for help made from a residence. Since the officers were unable to gain entry to the residence and since the dispatcher's return call to the phone that was used to call 911 was answered by a recording, the Trial Commissioner found that the officers could not have known that a murder had taken place inside the residence. Thus, their transmission of a disposition of "unnecessary call" did not constitute actionable misconduct since there was no showing that, based on the information the officers possessed, they should have taken further investigative actions.

More recently, in Case No. 2009-85577 (Jan. 17, 2012), a charge that a captain had failed to conduct a proper investigation into whether the driver of a Department vehicle that was involved in an accident was fit for duty was dismissed because there was no showing that the captain possessed information that would have alerted him that he should conduct an inquiry into whether the driver was fit for duty.

As in the above-cited cases, I find here that there was an insufficient showing that based on the information that was contained in the dispatcher's transmission and based on what the EMS worker said to them at Brooklyn Hospital, that Respondents should have been aware that they were required to conduct an investigation regarding the aided person.

Based on the above, Respondents are found Not Guilty of Specification No. 1.

Disciplinary Case No. 2011-5482 and Disciplinary Case No. 2011-5483

Specification No. 2

Each Respondent is charged with having failed to make proper entries in his Activity Log relating to an unidentified aided individual who was later identified as a homicide victim.

I find Respondents Guilty because their Activity Log entries for their tour of duty on January 1, 2011, show that neither of them made an entry as to who was the operator and who was the recorder and, most significantly, neither of them made an entry as to the name of the EMS worker at Brooklyn Hospital that they spoke to or what the EMS worker said to them.

Respondent Mixon only wrote in his Activity Log that for January 1, 2011, that his tour of duty was "2315 X 0750." (DX 1) Respondent Taylor wrote in his Activity Log that on January 1, 2011, at "0010" he was "10-10 @ BKL HOSP" and that at "0015" he was "90 Y." (DX 2)

Since neither of the Respondents made a proper entry in his Activity Log detailing the title and name of the person they had spoken to at Brooklyn Hospital and

what the EMS worker had asked them or told him, both Respondents are found Guilty of Specification No. 2.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Mixon was appointed to the Department on December 8, 1997. Respondent Taylor was appointed to the Department on July 1, 2002. Information from their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda.

Each Respondent has been found guilty of having failed to make a proper entry in his Activity Log relating to their response to Brooklyn Hospital.

As noted above, Respondent Taylor did enter in his Activity Log the fact that Respondents had arrived at Brooklyn Hospital and the time that they arrived there, although he did not delineate that they had a conversation with an EMS worker there or that the EMS worker had asked how he could ascertain the names of the officers who had responded to the aided scene. In Case No. 2009-85796 (Sept. 12, 2012), a six-year police officer who had no prior disciplinary record received a reprimand as a penalty for having failed to make a detailed Activity Log entry documenting the violent encounter he had with a suspect as he was arresting the suspect.

Respondent Mixon made no entry whatsoever in his Activity Log regarding the fact that Respondents had been present at Brooklyn Hospital. In Case No. 2010-3032 (March 15, 2013), a ten-year detective with no prior disciplinary record received a

penalty consisting of the forfeiture of one vacation day for failing to make any Activity Log entry documenting the fact that he had stopped an individual.

Therefore, consistent with the penalties imposed in the above-cited cases, it is recommended that Respondent Mixon's penalty consist of the forfeiture of one vacation day and that Respondent Taylor receive a reprimand as a penalty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

JUL 18 2014

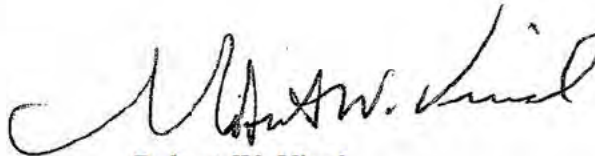
WILLIAM J. BRANTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ROBERT MIXON
TAX REGISTRY NO. 920620
DISCIPLINARY CASE NO. 2011-5482

Respondent received an overall rating of 4.0 on his 2012 performance evaluation, 4.5 on his 2011 evaluation, and 4.0 on his 2010 evaluation. He has been awarded one Meritorious Police Duty medal. [REDACTED]

For your consideration.

A handwritten signature in black ink, appearing to read "Robert W. Vinal", is written over a light blue horizontal line.

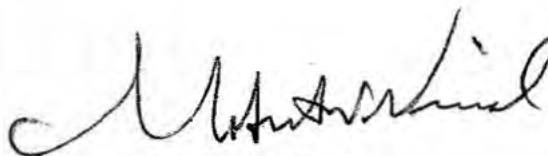
Robert W. Vinal
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CLARK TAYLOR
TAX REGISTRY NO. 931310
DISCIPLINARY CASE NO. 2011-5483

Respondent received an overall rating of 3.5 on his 2012 performance evaluation, 3.0 on his 2011 evaluation, and 3.0 on his 2010 evaluation. He has been awarded one Meritorious Police Duty medal. [REDACTED]

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials